

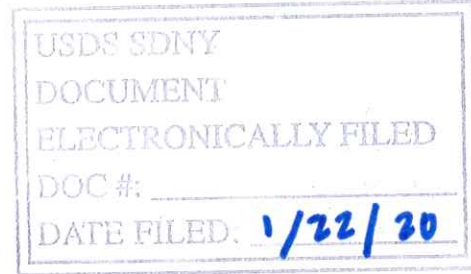
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

GEORGE KOKENYEI,

Supervisee.



No. 13-cr-340-8 (RJS)
ORDER

RICHARD J. SULLIVAN, Circuit Judge:

At the January 15, 2020 proceeding in this matter, the government moved to dismiss two specifications of violation on the grounds that the corresponding criminal charges had been dismissed in the Middle District of Pennsylvania after the district court suppressed wiretap evidence under 18 U.S.C. § 2518(8). The Court is now in receipt of the opinion from the Middle District of Pennsylvania setting forth the reasons for that suppression. *See United States v. Rinaldi*, Case Nos. 18-cr-279, 18-cr-280 (RDM) (M.D. Pa. December 18, 2019), ECF Doc. No. 209. In that opinion, the district court suppressed the wiretap evidence because the government failed to give a satisfactory explanation for the delayed sealing of the wiretap recordings. *Id.* at 48.

While the district court in Pennsylvania cited Second Circuit case law in its opinion, *see id.* at 14, 24, this Court is unaware of any case in this Circuit suppressing wiretap evidence under 18 U.S.C. § 2518(8) for delayed sealing. Indeed, courts in this Circuit have permitted delays of several months when the government did not act in bad faith. *See, e.g., United States v. Stegemann*, 40 F. Supp. 3d 249, 273 (N.D.N.Y. 2014); *see also United States v. Maldonado-Rivera*, 922 F.2d 934, 951 (2d Cir. 1990). In light of the case law in this Circuit, IT IS HEREBY ORDERED THAT the parties shall each make a submission, no later than February 7, 2020, addressing whether the wiretap evidence may be considered in the pending violation of supervised release

proceedings in this Court. IT IS FURTHER ORDERED THAT, by that same date, the government shall also supply the Court with (1) any relevant affidavits that explain the sealing delay in Pennsylvania, and (2) any other evidence collected in the investigation in Pennsylvania, including post-arrest statements made to law enforcement officers, statements made to undercover agents and informants during the course of the Pennsylvania investigation, and physical evidence seized in connection with the Pennsylvania investigation.

SO ORDERED.

Dated: January 22, 2020
New York, New York



RICHARD J. SULLIVAN
UNITED STATES CIRCUIT JUDGE
Sitting by Designation